IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 803 of 1999

in

SPECIAL CIVIL APPLICATIONNo 1054 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RABARI BHARABHAI RAJABHAI

Versus

DISTRICT COLLECTOR

Appearance:

MR YN RAVANI for Appellant No. 1

MR PREMAL JOSHI, AGP, for Respondents Nos. 1 to 3

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

The appellant, the original petitioner, filed a petition as he was aggrieved by an order passed by the State of Gujarat in Revenue Department whereby the order of the Collector, Jamnagar, rejecting an application for regrant of land in favour of the petitioner was confirmed. As the petition filed by the petitioner has been rejected, the petitioner has filed the present appeal.

2. The facts giving rise to the present litigation, in a nutshell, are as under:

3. The petitioner was granted certain land under order dated 1.7.76 passed by the Deputy Collector, Jamnagar on certain conditions for the purpose of cultivation. According to some of the conditions incorporated in the said order of grant dated 1.7.76, the petitioner had to cultivate the land personally and it was not open to him to lease or sell the land in question to any other person without taking permission from the Deputy Collector, Jamnagar. It was also obligatory on the part of the petitioner to make the land cultivable and start cultivating the land within a period of 2 years from the date on which the land was granted to him. A copy of the order whereby the land was granted to the petitioner is on record of this appeal at page 24 (Annexure C).

4. It was found by the government authorities that the petitoiner had not made any effort to make the land cultivable and had not cultivated the land as per the conditions incorporated in the order dated 1.7.76 and, therefore, a show-cause notice was given to the petitioner calling upon him to show cause as to why the land granted to him should not be confiscated as the petitioner had committed breach of the conditions on which the land was granted to him. The date of hearing was fixed and the petitioner was to be heard on 16.12.80 but the petitioner did not remain present before the Deputy Collector. In the circumstances, upon verifying the fact that the land in question had not been cultivated, the Deputy Collector had passed an order dated 27.1.81 whereby the land was confiscated and the Mamlatdar, Lalpur, was directed to take possession of the land in question. Before passing the said order, the Deputy Collector had perused the revenue record revealing the fact that the land had not been cultivated. The

Deputy Collector had also recorded statement given by the concerned Circle Inspector and Talati-cum-Mantri. Upon being satisfied that the petitioner had committed breach of some of the conditions on which the land in question was granted to him, the final order was passed on 27.1.81 by the Deputy Collector.

5. Thereafter the petitioner submitted an application for re-grant of the land in question to the Collector, Jamnagar, somewhere in 1995. The application submitted by the petitoiner to the Collector was duly considered by the Collector, but as the said application was submitted 14 years after the land had been confiscated, the said application was rejected by the Collector by his order dated 5.5.95. Being aggrieved by the order dated 5.5.95 passed by the Collector, Jamnagar, rejecting the petitioner's application for regrant of the land in question, the petitoiner filed a revision application before the State of Gujarat. The said revision application was heard on 4.2.97 by the Secretary (Appeals), Revenue Department of the State of Gujarat. It was submitted on behalf of the petitioner that the petitioner was cultivating another land bearing survey No. 56 admeasuring 4 acres and 15 gunthas situated at village Padana as well as the land in question. In substance, it was submitted on behalf of the petitioner that the petitioner had in fact cultivated the land in question and as the petitioner belonged to backward class, upon payment of Re. 1, the land which had been confiscated in favour of the government should be regranted to the petitioner.

6. The said revision application was rejected by the State of Gujarat by its order dated 24.2.97. While rejecting the revision application it was observed in the order that the land in question had been granted to the petitioner for the purpose of cultivation but the land in question had not been cultivated by the petitioner and the land had remained fallow and therefore the grant of the land had been cancelled and the land was confiscated. It was also observed that no appeal was filed by the petitioner against the said order of the Dy. Collector. The application for regrant was submitted to the Collector after considerably long period of 14 years and, therefore, the Collector had rejected the application. Thus, the revision application filed against the order of the Collector was rejected by the State of Gujarat by its order dated 24.2.97.

7. The order of the Deputy Collector cancelling the grant was never challenged. What was challenged was

rejection of the petitioner's application for regrant.

8. Being aggrieved by the order dated 24.2.97 passed by the State of Gujarat, the petitioner filed Special Civil Application no. 1054/99. After hearing the learned advocates appearing for the concerned parties, by an order dated 7.5.99, the learned single Judge rejected the petition. While rejecting the petition the learned single Judge observed in the order that the petitioner had not cultivated the land granted to him for considerably long period and therefore the government authorities had rightly cancelled the order of grant.

9. Being aggrieved by the order passed by the learned single Judge dated 7.5.99, the petitioner has approached this court by way of the present appeal.

10. We have heard learned advocate Shri Y.N. Ravani appearing for the petitioner and learned AGP Shri Premal Joshi for the respondent authorities.

11. It has been submitted by the learned advocate appearing for the petitioner that the order with regard to cancellation of grant of land ought not to have been passed by the Deputy Collector because such an order could have been passed only by the Collector. He has referred to the provisions of sec. 79-A of the Bombay Land Revenue Code (hereinafter referred to as 'the Code') and has submitted that the power under sec. 79A of the Code can be exercised only by the Collector whereas in fact in the instant case, the order with regard to confiscation of the land and eviction of the petitoiner from the land in question had been passed by the Deputy Collector, Jamnagar. It has been submitted by him that as the power had been exercised by a person not competent to exercise the same, the order cancelling the grant of land cannot be sustained and the State of Gujarat as well as the learned single Judge committed an error by upholding the order passed by the Deputy Collector.

12. Thereafter it has been submitted by the learned advocate that the petitioner ought to have been regranted the land in question as per the policy of the government. It has been submitted by him that one more chance ought to have been given to the petitioner by regranting the land but for the reasons best known to the government authorities, the land in question had not been regranted to the petitioner though one another person, who was similarly situated, had been regranted the land even after the land had been forfeited upon his committing breach of the conditions on which the lands were granted.

He has thus submitted that discriminatory treatment had been given to the petitoiner and at least on 'ek sali' (one year) basis the land should be granted to the petitioner so that the petitioner can cultivate the land and earn his livelihood.

13. It has been finally submitted by the learned advocate that as per the provisions of sec. 79A of the Code the petitioner could not have been summarily evicted because he had not been evicted as an unauthorized occupant of the land in question. Only an unauthroised occupant can be summarily evicted by the Collector from the government land and therefore the order passed by the Deputy Collector as well as the order passed by the learned single Judge are not just and proper.

14. On the other hand, learned AGP Shri Joshi has submitted on behalf of the government authorities that the petitioner was granted land at village Padana as the petitioner had represented himself as a landless person. In pursuance of the policy of the government at a throwaway price, the land in question had been granted to the petitoiner on certain conditions. It has been submitted by him that as per condition No. 7 incorporated in the order of grant the petitoiner was supposed to make the land cultivable and start cultivating the same within a period of 2 years from the date of grant of the land. It has been submitted by him that the petitioner had also to cultivate the land personally. Though the land in question was granted to the petitioner in 1976, till the date of hearing of the appeal, the petitioner had not cultivated the land in question.

15. Moreover, It has been submitted by the learned AGP that the appellant never challenged the order of the Deputy Collector whereby the grant of the land was cancelled. After the order of the Deputy Collector dated 27.1.81 was passed, somewhere in 1995, the appellant submitted an application to the Collector for regrant of the land in question. It has been submitted by him that the said application praying for regrant of the land in question was rejected. Being aggrieved by the said order passed by the Collector, a revision application was filed before the State of Gujarat and the said revision application was also rejected on 24.2.97. Being aggrieved by the said order, the petition was filed and the petition was rejected on 7.5.99. It has been submitted by him that mainly on account of the delay caused in submitting the application for regrant, the State of Gujarat had rejected the revision application.

He has thus submitted that the appeal deserves to be dismissed.

16. We have heard the learned advocates and have gone through the papers pertaining to the case. It is not in dispute that the land in question was not at all cultivated by the appellant. It appears from the revenue record, which is on record of this case, that the appellant did not make any effort to cultivate the land and the land had remained fallow. The Deputy Collector had perused the extract of 7/12 register and had recorded statements of the Circle Inspector as well as Talati-cum-Mantri and he had come to the conclusion that the land had not been cultivated by the appellant and thereby the appellant had committed breach of some of conditions on which the land was granted to the appellant and, therefore, he rightly passed the order dated 27.1.1981.

17. It is pertinent to note that the appellant never challenged validity of the order dated 27.1.81 passed by the Deputy Collector. Possession of the land in question has already been taken by the government authorities. After 14 years or so, the appellant made an application to the Collector for regrant of the land in question. The said application was rejected on 5.5.95. In our opinion, the appellant had no legal or fundamental right to have the land again especially when he had committed breach of condition on which the land was granted to him. The appellant thereafter challenged the order of the Collector dated 5.5.95 by filing a revision application which was rejected by an order dated 24.2.97. The Secretary (Appeals) rejected the revision application because the appellant had committed breach of the condition on which the land was granted and the application for regrant was made after 14 years. Moreover, it has been observed that the appellant never challenged the validity of the Deputy Collector's order dated 27.1.81. In view of the said fact and looking to the fact that delay of 14 years was caused even in making an application for regrant, the revision application was rejected.

18. We are of the view that the order passed by the Secretary (Appeals) as well as the learned single Judge are absolutely legal and proper. It is pertinent to note that the order of the Deputy Collector has not been challenged at all and, therefore, learned advocate Shri Patel's submission with regard to legality or validity of the order of the Deputy Collector cannot be looked into. The said order has already become final. The order which

was subject-matter of the revision application before the State Government was only the Collector's order dated 5.5.95 whereby the application for regrant of the land in question was rejected. Even the learned single Judge had to consider the legality and validity of the order of the Secretary (Appeals) dated 24.2.97 and the order of the Collector dated 5.5.95. In view of the above fact and in view of the fact that no citizen has a legal or fundamental right to get government land at a concessional price, in our opinion, the learned single Judge rightly rejected the petition.

19. It is also important to note that writ jurisdiction is a discretionary jurisdiction of this court. This court may not exercise its jurisdiction in favour of a person who has not come with clean hands or where a person who has approached the court has committed some fault or illegality. It is important to note that the petitioner was granted lands at two different places. He cultivated the land granted at Padana and the said land is still with him. The land which was not cultivated has been confiscated. It may not be possible for the petitioner to cultivate lands situated at two different places personally. In the circumstances, we do not think that the Collector, Jamnagar, made a mistake by not regranting the land in question to the petitioner after 14 years. In the instant case, the appellant did not comply with the conditions on which the land was granted and submitted an application for regrant of the land to the Collector after more than 14 years. In such a case, in our opinion, the learned single Judge was absolutely justified in rejecting the petition and in not exercising extraordinary and equity jurisdiction under the provisions of Art. 226 of the Constitution of India. In the circumstances, we do not find any substance in this appeal and the appeal is dismissed with no order as to costs. Notice is discharged.

(A.R. Dave, J.)

(D.P. Buch, J.)

(hn)